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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

11 ALCON ENTERTAINMENT, LLC,
12 a Delaware Limited Liability
Company,

13 Plaintiff,

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15 v.
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18 TESLA, INC., a Texas Corporation;
19 ELON MUSK, an individual;
20 WARNER BROS. DISCOVERY,
INC., a Delaware Corporation;

21 Defendants.
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CASE NO. 2;24-CV-09033-GW-RAO

**PLAINTIFF ALCON
ENTERTAINMENT, LLC’S
OBJECTIONS AND RESPONSES TO
EXTRINSIC MATERIAL PROFFERS
IN DEFENDANTS TESLA, INC.’S
AND ELON MUSK’S MOTION TO
DISMISS FIRST AMENDED
COMPLAINT**

Hearing Date: April 7, 2025
Time: 8:30 a.m.
Courtroom: 9D
Judicial Officer: Hon. George H. Wu

**OBJECTIONS AND RESPONSES TO EXTRINSIC MATERIAL
PROFFERS IN TESLA AND MUSK MOTION TO DISMISS**

Plaintiff Alcon Entertainment, LLC (“Plaintiff” or “Alcon”) makes the following objections and responses to the proffers of extrinsic material made by defendants Elon Musk (“Musk”) and Tesla, Inc. (“Tesla”) in connection with their motion to dismiss Alcon’s First Amended Complaint (“FAC,” [Dkt. 37]) pursuant to Fed. R. Civ. Pro. 12(b)(6) (“Rule 12(b)(6)”) and 8(a) (“Motion,” [Dkt. 48]).

I. RULE 12(b)(6) EXTRINSIC MATERIAL EXCEPTIONS

On a Rule 12(b)(6) motion, a court may consider material external to the challenged pleading and proffered by the movant without treating the motion as made pursuant to Fed. R. Civ. P. 56 (summary judgment), pursuant to three exceptions: 1) exhibits to the complaint (“First Exception”); 2) documents referenced by the complaint, upon which it “necessarily relies,” and the authenticity of which are undisputed (“Second Exception”); and 3) matters properly subject to judicial notice (“Third Exception”). *U.S. v. Corinthian Colleges*, 655 F.3d 984, 998-99 (9th Cir. 2011); *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (2001).

II. THE MOTION’S PROFFERS AND PLAINTIFF’S POSITIONS

PROFFER NO.	DESCRIPTION	PLAINTIFF POSITION
1	FAC Exhibit A (Blade Runner 2049 [“BR2049”] still image specifically requested by Defendants in pre-event licensing communication).	Satisfies First Exception. The Court may consider it. However, Plaintiff notes that the ECF system makes detrimental changes to the image color and quality relative to the Exhibit A image which Plaintiff actually

		submitted to the system in filing the FAC. The Exhibit A image as it appears in BR2049 at c. 1:37:55 is likely better quality and preferable for comparison.
2	FAC Exhibit B (Set of twelve sample still images from BR2049 exemplary of BR2049 Las Vegas Sequence scenes and imagery).	Satisfies First Exception. The Court may consider it. However, Plaintiff notes that the ECF system makes detrimental changes to the image color and quality relative to the Exhibit B images which Plaintiff actually submitted to the system in filing the FAC. The Exhibit B images and other images from the same Las Vegas Sequence as they appear in BR2049 (c. 1:36:28-2:01:50) are likely better quality and preferable for comparison.

1	3	FAC Exhibit C (Musk and Tesla's	Satisfies First Exception.
2		AI-Generated October 10, 2024	The Court may consider
3		Presentation Slide 2 Image).	it. However, Plaintiff
4			notes that the ECF system
5			makes detrimental
6			changes to the image
7			color and quality relative
8			to the Exhibit C image
9			which Plaintiff actually
10			submitted to the system in
11			filing the FAC. The
12			Exhibit C image as it
13			appears in the We Robot
14			Recording is likely better
15			quality and preferable for
16			comparison.
17	4	Exhibit 3 to March 6, 2025	Subject to one caveat, the
18		Declaration of Kristen McCallion	portion of Exhibit 3
19		(DVD copy of BR2049).	which is actually a
20			recording of BR2049
21			satisfies all three prongs
22			of the Second Exception,
23			and the Court may
24			consider it. The caveat:
25			many home entertainment
26			versions of BR2049 are
27			edited to strip out most
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1		(but not all) of the third-
2		party car branding that
3		appeared on K’s spinner
4		as BR2049 ran in
5		theaters. The submitted
6		DVD appears to be one of
7		those. Alcon does not
8		object to the Court
9		considering this DVD
10		version of BR2049,
11		except Alcon objects to it
12		as not authentic evidence
13		of the precise amount of
14		third-party car branding
15		that did or did not
16		actually appear in
17		BR2049 in theaters.
18	5	Exhibit 2 to February 4, 2025
19		Omnibus Declaration of Chris
20		Marchese (Recording of October
21		10, 2024 We Robot Presentation
22		[“We Robot Recording”]).
23	6	Alleged Alcon non-ownership of
24		word mark “Blade Runner.”
25		(“Blade Runner” is “a name that
26		Plaintiff does not even own[.]”
27		[Motion, 1:15; 3:16-17.]); (“The
28		This is a mixed factual
		and legal assertion
		outside the FAC, not
		subject to any of the
		Exceptions, and is also

1		FAC confirms Alcon does not own	false. Although it did not
2		the ‘Blade Runner’ name.”	plead it, Alcon does in
3		[Motion, 22:13.])	fact own a Lanham Act-
4			cognizable ownership
5			interest in the word mark
6			“Blade Runner.” The
7			Court may not consider
8			this proffer.
9	7	Implicitly, that there is a prior	This is a factual assertion
10		ruling in this action, or from this	outside the FAC, not
11		judicial officer in a prior action,	subject to any of the
12		“admonishing” Plaintiff or	Exceptions, and is also
13		Plaintiff’s counsel for violating	false. There have been no
14		Fed. R. Civ. P. 8(a). (Motion, 2:5-	prior substantive rulings
15		6.)	in this case on any issue.
16			Plaintiff’s counsel has
17			been appearing before
18			this judicial officer in
19			cases from time to time
20			for multiple decades and
21			does not recall ever being
22			“admonished” for
23			violating Fed. R. Civ. P.
24			8(a) in any such case.

1	8	“Defendants did not [factually or	This is a factual assertion
2		actually] copy [BR2049] at all[.]”	outside the FAC,
3		(Motion, 4:18-19.)	contradicting the FAC’s
4			factual allegations, and
5			not subject to any of the
6			Exceptions. The Court
7			may not consider it.
8	9	“Tesla has already advised Alcon	This is a factual assertion
9		that it lawfully licensed an image	outside the FAC,
10		from a stock photo agency and	contradicting the FAC’s
11		prompted an AI-drive image editor	factual allegations, and
12		to add ‘Elon Musk in trench coat	not subject to any of the
13		looking into the city.’” (Motion,	Exceptions. To the extent
14		14:14-16.)	that Musk and Tesla are
15			implying that they have
16			given Alcon or its counsel
17			any information about
18			how they generated the
19			Exhibit C image other
20			than what they have
21			stated in their motion
22			papers that is false. They
23			have not. The Court may
24			not consider this factual
25			assertion (beyond that
26			they said this in their
27			papers).
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10	March 6, 2025 Declaration of Kristen McCallion [“March 6, 2025 McCallion Decl.”], paragraph 3 (“Attached hereto as Exhibit 4 is a true and correct copy of an image that Tesla licensed from a stock photo agency.”)	This is a factual assertion outside the FAC, contradicting the FAC’s factual allegations, and not subject to any of the Exceptions. Even under Fed. R. Civ. P. 56 practice (summary judgment), this paragraph of part of the McCallion Decl. would not be competent evidence of anything. There is no foundation that Ms. McCallion has the ability to authenticate the Exhibit 4 document, and the actual statement of purported authentication provides almost no meaningful information about the Exhibit 4 document in the context of the parties’ dispute. The Court may not consider this statement.
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11	March 6, 2025 McKallion Decl., Ex 4 (Purported licensed image).	This is material extrinsic to the FAC, not subject to any of the Exceptions. Even if this were a motion under Fed. R. Civ. P. 56 (summary judgment), the document is not competently authenticated and would be inadmissible for any purpose. The Court may not consider it.
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DATED: March 17, 2025

ANDERSON YEH PC
Edward M. Anderson
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Attorneys for Plaintiff
ALCON ENTERTAINMENT, LLC